

## **§ 603.415**

in areas such as audits and intellectual property rights that may cause concern for commercial firms. Doing so should increase the likelihood that commercial firms will be willing to submit proposals.

### **§ 603.415 Cost sharing.**

To help ensure a competitive process that is fair and equitable to all potential proposers, the announcement should state clearly:

(a) That, to the maximum extent practicable, the non-Federal parties carrying out a RD&D project under a TIA are to provide at least half of the costs of the project (see § 603.215(b));

(b) The types of cost sharing that are acceptable;

(c) How any in-kind contributions will be valued, in accordance with §§ 603.530 through 603.555; and

(d) Whether any consideration will be given to alternative approaches a proposer may offer to demonstrate its strong commitment to and self-interest in the project's success, in accordance with § 603.215.

### **§ 603.420 Disclosure of information.**

The announcement should tell potential proposers that:

(a) For all TIAs, information described in paragraph (b) of this section is exempt from disclosure requirements of the Freedom of Information Act (FOIA)(codified at 5 U.S.C. 552) for a period of five years after the date on which the DOE receives the information from them; and

(b) As provided in 42 U.S.C. 7256(g) incorporating certain provisions of 10 U.S.C. 2371, disclosure is not required, and may not be compelled, under FOIA during that period if:

(1) A proposer submits the information in a competitive or noncompetitive process that could result in the award of a TIA; and

(2) The type of information is among the following types that are exempt:

(i) Proposals, proposal abstracts, and supporting documents; and

(ii) Business plans and technical information submitted on a confidential basis.

(c) If proposers desire to protect business plans and technical information for five years from FOIA disclosure re-

## **10 CFR Ch. II (1–1–10 Edition)**

quirements, they must mark them with a legend identifying them as documents submitted on a confidential basis. After the five-year period, information may be protected for longer periods if it meets any of the criteria in 5 U.S.C. 552(b) (as implemented by the DOE in 10 CFR part 1004) for exemption from FOIA disclosure requirements.

### **Subpart E—Pre-Award Business Evaluation**

#### **§ 603.500 Pre-award business evaluation.**

(a) The contracting officer must determine the qualification of the recipient, as described in §§ 603.510 and 603.515.

(b) As the business expert working with the program official, the contracting officer also must address the financial aspects of the proposed agreement. The contracting officer must:

(1) Determine that the total amount of funding for the proposed effort is reasonable, as addressed in § 603.520.

(2) Assess the value and determine the reasonableness of the recipient's proposed cost sharing contribution, as discussed in §§ 603.525 through 603.555.

(3) If contemplating the use of a fixed-support rather than expenditure-based TIA, ensure that its use is justified, as explained in §§ 603.560 and 603.565.

(4) Determine amounts for milestone payments, if used, as discussed in § 603.570.

#### **§ 603.505 Program resources.**

Program officials can be a source of information for determining the reasonableness of proposed funding (e.g., on labor rates, as discussed in § 603.520) or establishing observable and verifiable technical milestones for payments (see § 603.570).

#### **RECIPIENT QUALIFICATION**

#### **§ 603.510 Recipient qualifications.**

Prior to award of a TIA, the contracting officer's responsibilities for determining that the recipient is qualified are the same as those for awarding a grant or cooperative agreement. If the recipient is a consortium that is

## Department of Energy

## § 603.530

not formally incorporated, the contracting officer has the additional responsibility described in § 603.515.

### § 603.515 Qualification of a consortium.

(a) A consortium that is not formally incorporated must provide a collaboration agreement, commonly referred to as the articles of collaboration, which sets out the rights and responsibilities of each consortium member. This agreement binds the individual consortium members together and should discuss, among other things, the consortium's

- (1) Management structure;
- (2) Method of making payments to consortium members;
- (3) Means of ensuring and overseeing members' efforts on the project;
- (4) Provisions for members' cost sharing contributions; and
- (5) Provisions for ownership and rights in intellectual property developed previously or under the agreement.

(b) If the prospective recipient of a TIA is a consortium that is not formally incorporated, the contracting officer must, in consultation with legal counsel, review the management plan in the consortium's collaboration agreement to ensure that the management plan is sound and that it adequately addresses the elements necessary for an effective working relationship among the consortium members. An effective working relationship is essential to increase the project's chances of success.

### TOTAL FUNDING

### § 603.520 Reasonableness of total project funding.

In cooperation with the program official, the contracting officer must assess the reasonableness of the total estimated budget to perform the RD&D that will be supported by the agreement.

(a) *Labor.* Much of the budget likely will involve direct labor and associated indirect costs, which may be represented together as a "loaded" labor rate. The program official is an essential advisor on reasonableness of the overall level of effort and its composi-

tion by labor category. The contracting officer also may rely on experience with other awards as the basis for determining reasonableness.

(b) *Real property and equipment.* In almost all cases, the project costs should normally include only depreciation or use charges for real property and equipment of for-profit participants, in accordance with § 603.680. Remember that the budget for an expenditure-based TIA may not include depreciation of a participant's property as a direct cost of the project if that participant's practice is to charge the depreciation of that type of property as an indirect cost, as many organizations do.

### COST SHARING

### § 603.525 Value and reasonableness of the recipient's cost sharing contribution.

The contracting officer must:

(a) Determine that the recipient's cost sharing contributions meet the criteria for cost sharing and determine values for them, in accordance with §§ 603.530 through 603.555. In doing so, the contracting officer must:

(1) Ensure that there are affirmative statements from any third parties identified as sources of cash contributions, and

(2) Include in the award file an evaluation that documents how the values of the recipient's contributions to the funding of the project were determined.

(b) Judge that the recipient's cost sharing contribution, as a percentage of the total budget, is reasonable. To the maximum extent practicable, the recipient must provide at least half of the costs of the project, in accordance with § 603.215.

### § 603.530 Acceptable cost sharing.

The contracting officer may accept any cash or in-kind contributions that meet all of the following criteria.

(a) In the contracting officer's judgment, they represent meaningful cost sharing that demonstrates the recipient's commitment to the success of the RD&D project. Cash contributions clearly demonstrate commitment and they are strongly preferred over in-kind contributions.